

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

ANDREW BUSCH
in his individual capacity and
on behalf of all others similarly
situated

PLAINTIFF

V.

CASE NO. 4:12-CV-77 DPM

WAL-MART STORES, INC.

DEFENDANTS

**DEFENDANT'S MOTION FOR
PARTIAL DISMISSAL OF PLAINTIFF'S COMPLAINT**

Defendant Wal-Mart Stores, Inc. ("Walmart"), by its attorneys, Mitchell, Williams, Selig, Gates & Woodyard, P.L.L.C., moves the Court pursuant to Fed. R. Civ. P. 12(b)(6) to dismiss the claim for discrimination based on "criminal history" brought pursuant to Title VII of the Civil Rights Act of 1964, as amended ("Title VII") and the Arkansas Civil Rights Act ("ACRA"), and to dismiss the class claim contained in Plaintiff Andrew Busch's ("Busch") Complaint, and for its grounds states:

1. Busch was hired as an Accommodations Services Manager by Walmart on July 8, 2008. His employment was terminated February 4, 2011.

2. On February 22, 2011, Busch filed a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission ("EEOC") alleging denial of promotion and termination because of his age and disability, and stating that he was "terminated b/c of my criminal history in violation of Title VII." Busch later amended his charge to include hostile work environment in violation of "T7/ADEA." Although Busch checked the boxes on the EEOC form for discrimination based on age, disability, and "other" which he specified as "criminal

history,” he did not check race, color, sex, religion, or national origin. In other words, he did not identify himself as a member of any class of persons protected by Title VII.

3. Busch was convicted of failure to file a tax return. Persons convicted of failure to file a tax return are not a protected class under either Title VII or the ACRA, nor are those who have other types of criminal convictions.

4. Busch states in paragraph 9.2 of the Complaint, “[t]here are questions of law or fact common to the class, i.e., is it legal for Walmart to have a policy that it will fire or not hire any person with a criminal background.” Criminal history is not a protected class under Title VII or the ACRA, so there can be no Title VII individual or class claim.

5. Busch’s Charge of Discrimination filed with the EEOC contained only his individual claims. Since no allegations related to class discrimination were included, his Charge of Discrimination is insufficient to provide this Court with jurisdiction of the class claims alleged in his Complaint.

6. In addition, Busch’s mere repetition of the language of Fed. R. Civ. P. 23 is not sufficient to state a claim on behalf of a class. There must be an adequate statement of the basic facts to indicate that each of Rule 23’s requirements is fulfilled. In this case, the Complaint fails to even style the Complaint “Complaint - Class Action” or to define the putative class as required by Local Rule 23.1.

7. For the reasons stated herein and the Brief in Support of this Motion, Busch’s Complaint fails to state a claim upon which relief can be granted under Title VII or the ACRA for criminal history discrimination and those claims should be dismissed with prejudice. Busch’s class claims related to the criminal history should be dismissed because he is not a member of a

protected class and he has failed to make even the basic statement of facts required by Fed. R. Civ. P. 23 and Local Rule 23.1 to support any class.

WHEREFORE, Walmart respectfully requests that the Court dismiss the Title VII and ACRA claims contained in the Complaint with prejudice and to further dismiss the class claims.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2012, a true and correct copy of the above and foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

- **Brian Meadors, Amanda Meadors**
brian@meadorslawfirm.com, mandy@meadorslawfirm.com

 /s/ Marshall Ney
Marshall Ney